

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

Telephone Number Portability
Cost Classification Proceeding

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CC Docket No. 95-116

RM 8535

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PETITION FOR CLARIFICATION OR REVIEW

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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Date: January 13, 1999
[LAP0238 lnp pfrtemp.doc]

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I. INTRODUCTION AND SUMMARY

Ameritech files this Petition for Clarification or Review regarding the Common Carrier Bureau's ("Bureau") Memorandum Opinion and Order (LNP Cost-Classification Order" or "Order") released in this matter on December 14, 1998 [DA 98-2534].

Ameritech seeks clarification or review of the Bureau's decision regarding recovery of the incremental portion of joint costs of equipment, facilities and software required to adapt existing systems and upgrade networks to provide long-term number portability ("LNP"). Ameritech believes that the Bureau has reached a logical and reasonable approach to recovery of these joint costs in paragraphs 22-30 of its Order. However, there is general language in paragraphs 7-14 of the Order that could be taken out of context and be construed as denying recovery of any joint costs of LNP, even those that would not ordinarily have been incurred in the absence of the obligation to provide LNP. Therefore, out of an abundance of caution, Ameritech is seeking this clarification or review.

In this Petition, Ameritech seeks clarification of four points. First, incremental joint costs required to adapt systems and upgrade networks to provide LNP are recovered through the LNP

federal recovery mechanisms in accordance with the allocation methodologies specified in paragraphs 23 and 29 of the LNP Cost-Classification Order. Second, such incremental joint costs include costs required to support pre-ordering, ordering, provisioning, maintenance and repair, and billing required for the provision of LNP. Third, such incremental joint costs include the incremental portion of network upgrades required for the provision of LNP. Fourth, such incremental joint costs include the incremental portion of costs incurred to upgrade 9-1-1 databases to ensure reliability of 9-1-1 service from ported numbers provided by LNP.

II. REQUESTED CLARIFICATIONS.

1. INCREMENTAL JOINT COSTS INCURRED IN THE PROVISION OF LNP ARE RECOVERABLE BASED UPON THE BUREAU'S FORMULA.

Based on the specific language in paragraphs 23 and 29 of the Cost-Classification Order governing recovery of joint costs of providing LNP, the Bureau has set forth a reasonable methodology for the allocation of joint costs of adapting systems and upgrading networks between LNP and non-LNP services. That methodology recognizes carriers' rights and obligations to recover all incremental costs incurred as a result of LNP in a competitively-neutral manner, and provides a formula for identifying the portion of joint costs that are incremental to LNP. Those paragraphs are also consistent with Section 251(e)(2) of the Act, the Commission's Third Report and Order¹ and prior Commission interpretations of the meaning of "provide."

The Bureau's approach is straightforward -- carriers may recover through the LNP federal recovery mechanisms all costs of facilities, equipment and software dedicated to LNP, and the incremental portion of joint costs of providing LNP. However, to recover a joint cost of adapting

¹ Telephone Number Portability, Third Report and Order, released May 12, 1998 ("Third Report and Order").

systems or upgrading networks for the provision of LNP, the carrier must demonstrate that it would not ordinarily have incurred that cost “but for” the requirement to provide LNP, and that it is used “in the provision of” LNP. Where applicable, such an eligible joint cost is allocated between LNP and non-LNP functions based upon the difference between the cost of the item with and without the LNP capabilities or functions. In other cases, such an LNP eligible joint cost is allocated between the LNP and non-LNP functions based upon a reasonable allocation formula, such relative capacity utilization or usage. However, in those cases, the allocation to LNP may not exceed the total joint cost less any avoided cost and incremental revenue.

The Bureau’s approach responds to the Commission’s directive that it “determine appropriate methods of apportioning joint costs ...”² Such a methodology is required because the Commission will “consider as carrier-specific costs directly related to the provision of number portability that portion of a carrier’s joint costs that is demonstrably an incremental cost carriers incur in the provision of long term number portability.” Costs recognized by the Commission as eligible LNP costs, include “software, generics, switch hardware, and OSS, SS7 or AIN upgrades....” The Commission found that “[a]ppportioning cost in this way will further the goals of section 251(2)(e) by recognizing that providing number portability will cause some carriers... to incur cost that they would not ordinarily have incurred in providing telecommunications service.”³ [Emphasis supplied.] Thus, the Commission’s policy objective is to compensate carriers for LNP costs that they would not have “ordinarily” incurred.

Applying the Commission’s principals here, the Bureau should clarify that carriers may recover the incremental portion of joint costs of equipment, facilities and software required to

² Third Report and Order para. 75.

³ Id para. 73.

provide LNP. In particular, the Bureau should clarify that in paragraphs 7 through 14 of the Cost-Classification Order it did not intend to exclude from the recovery the incremental portion of any joint costs incurred to adapt systems and upgrade networks to provide LNP, that would “not” ordinarily have been incurred. Rather, the Bureau should clarify that it simply meant that such costs had to be identified and allocated between LNP and non-LNP functions in accordance with paragraphs 23 and 29 of the Cost-Classification Order. Such a clarification would eliminate any possible internal inconsistencies in the LNP Cost-Classification Order itself, any conflicts with the Commission’s Third Report and Order, or with the requirement of Section 251(e)(2) that the “costs of . . . establishing number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission.”

The Bureau’s discussion in paragraphs 7 through 14 of the Order of a “general standard” creates this need for a clarification. For example, in paragraph 9 of the Order the Bureau appears to restrict recovery of joint incremental costs to the narrowly defined functions of “querying of calls and the porting of telephone numbers” and, therefore, arguably limits recovery of “general network upgrade costs” to recovery through “price caps and rate-of-return mechanisms.” Another example, is paragraph 14 of the Order which narrowly defines “porting numbers” as “only systems for uploading and downloading LRN . . . and for transmitting porting orders between carriers.” However, it is clear that LNP has caused many other costs relating to other functions that would not “ordinarily” have been incurred and are, therefore, recoverable through the federal LNP recovery mechanisms.

The Bureau also notes in paragraph 12 of the Cost-Classification Order that it will “require that LECs to distinguish clearly costs incurred for narrowly defined portability functions

from costs incurred to adapt other systems to implement LNP, such as repair and maintenance, billing, or order processing systems.” (Emphasis added.) The Bureau reasons that in its “view” the Commission “adopted a very narrow definition of this phrase [in the provision of] . . . stating that only eligible LNP costs are ‘costs carriers incur specifically in the provision of number portability services, such as for the querying of calls and the porting of telephone numbers from one carrier to another.’” As a result, the Bureau requires “LECs to distinguish clearly costs incurred for the narrowly defined portability functions from costs incurred to adapt other systems to implement LNP, such as repair and maintenance, billing, or order processing systems.”

As directed in paragraph 12 of the Order, Ameritech will “distinguish” incremental joint costs from dedicated costs of LNP. However, Ameritech seeks clarification that consistent with paragraph 73 of Third Report and Order and paragraphs 23 and 29 of the Bureau’s Cost-Classification Order, that Ameritech may still recover the incremental portion of such joint costs through the federal LNP recovery mechanisms. These costs are not “incidental” or the result of upgrades that would have been undertaken in the ordinary course of business, and this, would not have been incurred but for the provision of LNP. As such, they are not already built into Ameritech’s price cap rates, but rather are specific to LNP.

This clarification is necessary since Ameritech has incurred significant costs specifically required to develop, purchase, install, provision and maintain OSS, AIN, SS7 and 911 equipment, facilities and software so that it can provide LNP. In each case, Ameritech is prepared to demonstrate that the cost would not “ordinarily” have been incurred “but for” number portability, and that the equipment, facility, software or database is involved “in the provision of” LNP. In cases, where such equipment, facilities and equipment also provides incidental benefits to other services, Ameritech will allocate these costs between LNP and non-

LNP functions in accordance with paragraphs 23 and 29 of the Bureau's Order. That is to say, where the costs of the functionality can be divided between LNP and non-LNP functions, then under paragraph 23 of the Order Ameritech will "subtract the costs of an item without the telephone number portability functionality from the total costs of that item" Where the joint costs cannot be divided, under paragraph 29 of the Order, Ameritech will allocate the cost of the item based upon a reasonable allocation methodology. In this regard, where applicable Ameritech intends to use relative utilization. However, as required, the portion of the costs allocated to LNP will not "exceed the remainder of the costs after subtracting all avoided costs and incremental revenue."⁴

2. ELIGIBLE JOINT COSTS INCLUDE THOSE COSTS REQUIRED FOR PRE-ORDERING, ORDERING, PROVISIONING, MAINTAINANCE AND REPAIR, AND BILLING IN THE PROVISION OF LNP

Ameritech asks the Bureau to clarify that incremental costs of LNP can include those relating to operations support systems ("OSS") functions specifically required to provide LNP.⁵ The Commission has long included access to OSS functions as an integral part of the "provision of" LNP. However, taken out of context, certain language in paragraphs 8 and 14 of the Bureau's Order could be incorrectly interpreted as excluding any OSS costs from the eligible LNP costs, except those for uploading and downloading LRN information.

At paragraph 73 of the Third Report and Order, the Commission held that carriers could not recover through the federal LNP charges "the entire cost of an upgrades as a carrier-specific cost directly related to providing number portability just because some aspect of the upgrade

⁴ *Id.* para. 29.

⁵ Ameritech is not seeking to recover all OSS costs, but rather only those that would not ordinarily have incurred "but for" the requirement to provide LNP. Any joint costs of upgrading and adapting OSS would be allocated between LNP and non-LNP functions that benefit from them, based upon the mechanisms specified in paragraphs 23 and 29 of the Cost-Classification Order.

relates to the provision of number portability.” But the Commission recognized that “[c]arriers incur costs for software, generics, switch hardware, and OSS, SS7 or AIN upgrades to provide a wide range of services and features. Consequently, only a portion of such costs are carrier-specific costs directly related to providing number portability.” Thus, the Commission has specifically recognized the portion of OSS related costs incremental to LNP could be recovered through the federal LNP recovery mechanism.

However, the Bureau notes in paragraph 8 of the Cost-Classification Order that “[w]hile some of these costs are *for the provision of* telephone number portability, others are incurred because of the impact of portability on existing systems for providing repair and maintenance services, 911 services, service ordering, and other network functions.” Ameritech is concerned that this language could be taken out of context and incorrectly interpreted as excluding all OSS costs from recovery, even those that are dedicated or incremental to LNP. For instance, it could be incorrectly argued that OSS costs were not incurred for the “provision of” number portability since they do not directly relate to a narrowly limited definition of that term confined to “quering of calls and the porting of numbers”.⁶

However, a determination that the provision of LNP does not include OSS functions would ignore the fact that number portability could not be provided unless these OSS costs were incurred so necessary OSS functions are performed. Therefore, in the absence of obligation to provide LNP, these incremental OSS cost involved would not “ordinarily” have been incurred.⁷ Clearly, OSS functions are an essential component of the “provision of” number portability, and

⁶ See, paras. 12 and 14 of the Order.

⁷ See Third Report and Order at par. 73.

qualify for cost-recovery through the federal number portability charges under Section 251(e)(2) of the Act.

The Commission itself has recognized the fact that access to OSS is an integral part of the provision of number portability. For that reason, it imposed access to OSS as a condition of BOC long distance entry.⁸ Specifically, the Commission held that as a part of a application for authorization for interLATA authorization under Section 271 of the Act “[w]e also would expect to review evidence demonstrating that the BOC will provide nondiscriminatory access to OSS to support the provision of number portability.”⁹ (Emphasis supplied.)

This interpretation of the term “in the provision of” as including OSS functions is also supported by the Commission’s unbundling regulations. The Commission specifically found in the Local Competition Order that the definition of network element “also includes information that the incumbent LECs use to provide telecommunications services commercially, such as information required for pre-ordering, ordering, provisioning, billing and maintenance and repair services.”¹⁰ (Emphasis supplied and footnotes excluded.) Moreover, the Commission reasoned that “the information contained in, and processed by operations support systems can be classified

⁸ See, Application of Ameritech Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In Michigan, Memorandum Opinion and Order, released August 19, 1997, (“Michigan 271 Order”) at paras. 342, 132, and Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana, Memorandum Opinion and Order, released October 13, 1998 (“Second Louisiana 271 Order”) at paras. 293, 134-137.

⁹ See, Michigan 271 Order 342, and Second Louisiana 271 Order, at para. 144.

¹⁰ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Dockets Nos. 96-98 and 95-185, First Report and Order, released August 8, 1996 (“Local Competition Order”) at para. 262.

as ‘information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service.’”¹¹ (Emphasis supplied.)

**3. THE INCREMENTAL PORTION OF NETWORK UPGRADES
NECESSARY TO PROVIDE LNP ARE LNP ELIGIBLE COSTS.**

As previously discussed, in paragraph 11 of the Cost-Classification Order the Bureau discusses the recovery of costs of network upgrades with language that could be taken out of context and interpreted as disallowing recovery of network upgrade costs, even those that are incremental to LNP. However, in paragraph 27 of the Order, the Bureau recognizes that “the incremental portion of the costs of generic upgrades due to LNP functions are eligible LNP costs.” As such, the Bureau determined that “the difference between the costs of the upgrades without the LNP functionality and the total cost of the upgrade with the LNP functionality is an eligible LNP cost”.

For the reasons discussed above, in order to clear up any ambiguity, the Bureau should clarify that the incremental portion of the costs of generic network upgrades that would not have ordinarily undertaken, but for LNP, and which are involved in the provision of LNP are eligible LNP costs. The Bureau should clarify that the allocation formula discussed in paragraph 27 applies when the costs of the upgrades can be divided between LNP and non-LNP functionalities utilized by the carrier. In cases where the upgrade only supports LNP, the Bureau should clarify that it is a “dedicated” cost of LNP. In instances where the upgrade also provides benefit to non-LNP services, but its costs cannot be divided between them, the Bureau should clarify that such costs are allocated between the LNP and non-LNP functions based upon the provisions of paragraph 29 of the Order. That is to say, the costs should be allocated based

¹¹ *Id* at para. 517.

upon a reasonable allocation method (such as relative usage), but the amount allocated to LNP should not exceed the total costs of the upgrade, less any incremental revenue or cost savings.

4. SINCE RELIABLE 9-1-1 IS A STATUTORILY REQUIRED ELEMENT OF LNP, IT IS INCLUDED IN THE PROVISION OF LNP.

The Bureau should also clarify that incremental costs incurred to adapt and upgrade 9-1-1 equipment, facilities, databases and software required for “the provision of” LNP are recoverable through the LNP federal recovery mechanisms. In fact, the requirement that 9-1-1 calls from ported numbers be properly processed is an integral part of the statutory requirement to provide LNP. In this regard, the Act specifically defines the term “number portability” to include “the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without loss of quality, reliability, or convenience” (Emphasis added.) Thus, the Act requires that carriers provide reliable 9-1-1 service from posted numbers.

Clearly, the proper functioning of 9-1-1 is included within the statutory definition of number portability and is an integral part of the obligation to provide LNP. As such, it would be inconsistent with the Act to now find that reliable 9-1-1 is not part of the “provision of” number portability, or that costs that would not ordinarily have been incurred to provide 911 service, but were specifically required so that the 9-1-1 database can process calls from ported numbers. Moreover, such a result would also violate the mandate of Section 251(e)(2) that the cost of LNP be borne by all carriers on a “competitively neutral” basis, and paragraph 73 of the Third Report and Order.

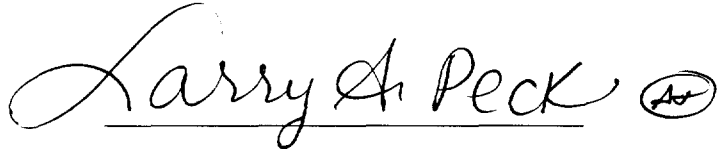
Again, Ameritech is not seeking to recover through the federal LNP recovery mechanisms all costs of maintaining the 9-1-1 capabilities. Rather, it is simply seeks recovery of those costs that it incurred so that its 9-1-1 database will retain listing information for customers that it no longer directly serves, but for which it is porting a number to another carrier. Normally, once a customer terminates its local exchange service with Ameritech, the customer's listing information is automatically removed from the 9-1-1 database. In order to support LNP, 9-1-1 system changes were necessary so that such listing data was retained in the 9-1-1 database after the Ameritech local exchange service was terminated, but the number was posted, so the listing information could be provided when a 9-1-1 call was placed from the ported number. Ameritech properly seeks recovery of the costs of creating and providing this capability, since they are specific to LNP and provide no benefit to any other service. Moreover, these costs are clearly incremental to LNP since they would not ordinarily have been incurred "but for" the obligation to provide LNP without loss of quality or reliability, and are used to make LNP properly function on 9-1-1 calls.

III. CONCLUSION.

For the above reasons, Ameritech requests that the Bureau clarify, these points. In the event that the Bureau takes a contrary interpretation of its Order, then Ameritech seeks review of that decision. First, incremental joint costs required to adapt systems and upgrade networks to provide LNP are recovered through the LNP federal recovery mechanisms in accordance with the allocation methodologies specified in paragraphs 23 and 29 of the LNP Cost-Classification Order. Second, such incremental joint costs include costs required to support pre-ordering, ordering, provisioning, maintenance and repair, and billing required for the provision of LNP.

Third, such incremental joint costs include the incremental portion of network upgrades required for the provision of LNP. Fourth, such incremental joint costs include the incremental portion of costs incurred to upgrade 9-1-1 databases to ensure reliability of 9-1-1 service from ported numbers provided by LNP.

Respectfully Submitted,


A handwritten signature in cursive script that reads "Larry A. Peck". To the right of the signature is a small circular stamp containing the initials "AP".

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CERTIFICATE OF SERVICE

I, Edith Smith, do hereby certify that a copy of Ameritech's Petition for Clarification or Review has been served on the parties listed on the attached service list, via first class mail, postage prepaid, on this 13th day of January 13, 1999.

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